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10/552,097	02/21/2006	Leung Choi Chow	2733.35US01	4192

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EXAMINER

MICHENER, JOSHUA J

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3644

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/552,097	Applicant(s) CHOW ET AL.	
	Examiner JOSHUA J. MICHENER	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-29,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) 19,21,22,24-26,31 and 32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-18,20,23 and 27-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Newly submitted claim 32 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Lack of unity of invention may be directly evident “a priori,” that is, before considering the claims in relation to any prior art, or may only become apparent “a posteriori,” that is, after taking the prior art into consideration. For example, independent claims to A + X, A + Y, X + Y can be said to lack unity a priori as there is no subject matter common to all claims. In the case of independent claims to A + X and A + Y, unity of invention is present a priori as A is common to both claims. **However, if it can be established that A is known, there is lack of unity a posteriori, since A (be it a single feature or a group of features) is not a technical feature that defines a contribution over the prior art see MPEP 1801.**

In the instant case, the alleged inventive special technical feature drawn to an annular seal with a gap filler is seen in at least figure 3 of US Patent to Dowty 1,972,216 OF Fletcher et al. (figures 1 - 7), thus the alleged special technical feature is known in the prior and fails to define a contribution over the prior art and a lack of unity of invention exists.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 32 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 recites, "a separate part". However, "a separate part" is first recited in independent claim 15, thus it is unclear what "separate part" Applicant intends to claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15 – 18, 20, 23, 28, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Fletcher et al. (US 3,187,797).

1. Regarding claims 15, 20, 23, 28, and 29, Fletcher et al. discloses an aircraft (col 1, lines 10 – 25) with retractable landing gear (col 2, lines 36 - 44) with tires and rims (figures 1, 2, and 5 – 7) wherein the tire and wheel are shaped that a gap is defined between a surface of the tire and wheel (figures 1, 2, 5 - 7), a separate part (figures 1, 2, 5 - 7) is provided at the junction between the tire and the rim which closes said gap (see figures above), said separate part is so shaped that on at least one side of the wheel, a surface of said separate interfaces smoothly with said surface of the wheel and surface of the tire. It is noted, the method is inherent to the apparatus as claimed. It should be appreciated that the applicant's functional language in the claims does not

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serve to impart patentability. While features of an apparatus may be recited either structurally or functional, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Apparatus claims cover what a device is, not what a device does. A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior apparatus teaches all the structural limitation of the claims. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-2 (Fed. Cir. 1997); Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990); Ex parte Masham, 2 USPQ 2d 1647 (Bd. Pat. App. & Inter. 1987).

2. Regarding claim 16, as best understood, Fletch discloses the apparatus as in claim 15 wherein at least a part of the separate part is flexible (figures 1, 2, and 5 – 7).

3. Regarding claim 17, as best understood, Fletch discloses the apparatus as in claim 15 wherein at least a part of the region is defined by an elastically deformable material (figures 1, 2, and 5 – 7, col 2, lines 65 – 72, col 3, lines 25 – 34, col 4, lines 60 – 75, col 6, lines 45 – 53, col 6, lines 4 - 10).

4. Regarding claim 18, as best understood, Fletcher et al., discloses the apparatus as in claim 15, comprising a multiplicity of flexible elements each extending radially across the junction between the tire and rim (elements 2, 3, 6, 7, 16, 17, figures 1, 2, and 5 – 7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher et al.

5. Regarding claim 27, Fletcher et al., discloses the apparatus as in claim 15, wherein the landing gear are suitable for jet engine aircraft with undercarriage cargo bay storage, but is silent to type/size suitable for 50 or more passengers. However, the Examiner takes official notice, it is old and well known in the art that commercial airliners are comprised of retractable landing gear with undercarriage bay storage wherein some jet engine airliners carry 50 or more passengers. Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Fletcher to implement this landing gear system into an airliner that carries 50 or more passengers because it is old and well known to utilize retractable landing gear on commercial airlines to reduce air drag.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ralph in view of Fletcher et al.

6. Regarding claim 29, Ralph discloses an aircraft with retractable landing gear, but fails to teach of separate part as in claim 15. Fletcher discloses a separate part (figures 1, 2, 5 - 7) is provided at the junction between the tire and the rim which closes said gap (see figures above), said separate part is so shaped that on at least one side of the wheel, a surface of said separate interfaces smoothly with said surface of the wheel and surface of the tire.

7. It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the existing design of the aircraft to help reduce engine flame out by using water deflectors on the tires wherein the water deflectors inherently provide noise reduction as they help stream line the flow around the tire and rim arrangements.

Response to Arguments

Applicant's arguments filed 1/24/2008 have been fully considered but they are not persuasive.

8. In response to Applicant's arguments that Fletcher fails to teach of a "streamlined" structure, this argument appears to be off point. As claimed, Applicant fails to claim any streamlined structured, rather Applicant recites functional limitations drawn to a streamlined flow, thus this argument is moot. Irregardless, each of the different embodiments of Fletcher as seen in figures 1, 2 and 5 – 7 fill in an arbitrary gap area between a tire and rim portion, commensurate in the scope of the claims, and by filling in this area would result in a more streamlined flow from around the gap region. Furthermore, Applicant is reminded that apparatus claims cover what a device is, not what a device does. A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior apparatus teaches all the structural limitation of the claims. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d, 1429, 1431-2 (Fed. Cir. 1997); Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990); Ex parte Masham, 2 USPQ 2d 1647 (Bd. Pat. App. & Inter. 1987). In the instant case, the Examiner asserts, AS CLAIMED Fletcher meets the structural limitations and thus meets the scope of the claims.

Remarks

Applicant traversed the Examiner's position of Official notice to claim 27 based upon the association of dependency from claim 15, however failed to specifically point out the

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supposed errors in the Examiner's assertion thereby resulting in an inadequate traversal of the Examiner's Official notice. As such, the Examiner takes the assertion of Official notice be admitted prior art due to the inadequate traversal (see MPEP 2144.03). Thus, it is admitted prior art that it is old and well known in the art that commercial airliners are comprised of retractable landing gear with undercarriage bay storage wherein some jet engine airliners carry 50 or more passengers.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA J. MICHENER whose telephone number is (571)272-1467. The examiner can normally be reached on Monday through Friday 7-4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael R Mansen/
Supervisory Patent Examiner, Art Unit
3644

/J. J. M./
Examiner, Art Unit 3644